

Legal Hurdles to Clear In Building, Buying, Or Owning a Home

THIS CHAPTER COVERS legal problems involved in having a home built, buying an existing dwelling, settlement, and homeownership.

If you are having a home custom built or purchasing a house to be built in a planned subdivision, you must first select a site. If you are custom building the house, you need to acquire title to the site before construction, unless you are buying the site from the builder.

Prior to purchase of a site or house your attorney should check local zoning ordinances and building codes to find out if you can use the property for the purpose you intend. And you should determine whether, under the present zoning, the surrounding area will be compatible with your use of the property as a residence.

After deciding on the type of house, you and your attorney should sit down with the contractor and reach a written agreement as to the features of the house, costs, completion date, and the warranties.

If you have an architect, he should attend this meeting and be primarily responsible for drawing up plans and specifications. A split responsibility between builder and architect should be avoided, if possible.

When you are building a house and the builder gives you a contract to sign, do not sign until your attorney has reviewed it and made any changes needed to protect you.

Be sure that the contract, plans, and specifications (contract documents) set forth everything you and the builder agree should go into the house. These are the only documents which bind the

builder. He is not legally obligated to include anything in the house not listed in the contract documents.

Any changes to the contract documents which you and the builder agree to should be written into the documents, and initialed by you and the builder. Your architect should review any change involving the structure or furnishings of the house itself; your attorney should review any other changes.

If you decide the best approach to obtaining a home for you and your family is to purchase an existing house, you should first decide whether to contract with a real estate broker or to try to find a house and deal directly with the seller or his broker.

In most cases it is a good idea to use a broker if you are moving into an unfamiliar town or community. The broker serves as a clearinghouse and a screening process for you. He will be able to save you considerable time and effort which you would expend looking at houses unsuitable for you and your family.

A good broker will also be able to give detailed information about the town, the neighborhood, schools, taxes, shopping, houses of worship, transportation, and other community facilities.

Even if you know the area where you wish to purchase a house, you would do well to check with several brokers to see what houses are listed with them. Generally a broker represents the seller and the seller has to pay him. This fee is often reflected in the price of the house.

When there is an exclusive contract with the seller, the seller may have to pay the brokerage fee even though you deal directly with him. But if there is no exclusive contract or the house is not listed with a broker, you may save money dealing directly with the seller, so long as you or someone you contract with is able to inspect the house and

AUTHOR JEROME G. OSICK is an Attorney in the Community Development Division, Office of the General Counsel.

draw up the necessary papers such as an option or agreement of sale.

In this type of transaction, an inspection by an architect would be a wise investment.

Once you determine you want to buy a specific house, you make an offer. If the seller decides to accept the offer, the two of you negotiate terms of the contract of sale.

This contract, which is an agreement binding upon both parties, will state exactly what will be included in the purchase price. If you want the seller to leave a certain chandelier or mirror, this should be included in the contract.

The contract should state that it is conditional upon the house meeting all local building and health codes, a termite inspection being made, and free and clear title being obtainable. It also should be conditional on your being able to obtain financing for the purchase and provide adequate time for doing so.

Some contracts to purchase real estate provide that they not be recorded. Recording the contract may be a way of preventing the seller from selling the house to another purchaser. Whether to record the contract or not will be a matter of negotiation between you and the seller, subject to general practice in that area.

Assuming all has gone well in construction of your new house or that all the conditions set forth in the contract of sale for the existing house have been met, you are now ready for settlement—the closing of the real estate transaction. The closing represents the finalizing of the loan to finance the house or the purchase of the house. If you owned the site on which the house was built, a closing would have taken place at the time of purchase of the site.

You will want an attorney to represent you at the closing unless it is handled by a title insurance company. The mortgage lender may require that you use an attorney approved by him. You may also want your own attorney present at the closing.

At final acceptance of the house you

should receive from the builder all guarantees and warranties which apply to the appliances, the equipment, and structural members (such as the roof) in the house.

The builder should also provide a warranty, which is usually in effect for a year, on the house itself as well as a certificate that he has paid all of his workers, subcontractors, or suppliers for work done on the house. He should also provide a waiver of lien from any worker, subcontractor, or supplier who has not yet been paid.

If you do not receive the certification and waiver, you may find that someone whom the builder has not paid will be able to file a lien against the house and require you to pay him under threat of a forced sale of the house. Thus, you should have your attorney review these items so that he is convinced you are reasonably protected against such liens.

Make sure the house includes everything the contract said it should include. You, or your architect, should inspect the house immediately before closing or final acceptance. Anything missing or not done properly should be brought to the attention of the seller or builder at the closing, or before if possible.

If agreement cannot be reached on how to rectify the errors, you may want to delay the closing until agreement is reached. It will be more difficult to get things done after closing, since the builder or seller will have been paid. Therefore, unless some of the purchase or construction money is held in escrow, which you should arrange for, you will not have much leverage to get the problem corrected after closing.

The deed is your proof of title to, or ownership of, the property. Usually title to a house is taken "in fee." This means you get absolute title to the property, subject only to existing recorded easements and liens and any encumbrances. The deed is signed by the seller and names you as the purchaser.

You may take title either in your own name, in which case your spouse may

have certain legal rights to the property, or jointly with your spouse, either with or without a right of survivorship. The manner in which you take title will effect various tax, transfer, and inheritance consequences in the future and is a matter which you should decide in consultation with your attorney.

The deed should always be recorded to protect your ownership rights.

The promissory note is the instrument you sign in which you promise to repay the person or institution that lent you the money to purchase the house. This note will establish periodic (usually monthly) payments which you will have to meet to repay the loan. The note, or mortgage, may also require you to prepay to the lender an amount equal to the monthly real estate taxes and hazard insurance premiums on your house. The lender holds these amounts in escrow to be paid when the charges are due.

You should have a general idea of what the monthly cost will be before you contract to purchase the house. This, plus utilities, maintenance and upkeep expenses, is the monthly cost of homeownership.

The mortgage or deed of trust is the document you sign which in effect says that if you default on your obligations to the lender, he has the right to sell the house to recover the money you owe. Whether the document is a deed of trust or a mortgage will depend on the laws of your State. The lender will record the mortgage or deed of trust to protect himself against losing his security interest in the house.

The mortgage will encumber the property until it is satisfied, that is, until the note is paid off. It cannot be removed by a mere transfer of the property to another person.

You will probably want to take out a mortgage life insurance policy. One type of policy provides that, should you die, the mortgage will be paid by the insurance company, and your heirs will not be burdened with the costs of paying off the house. Another form of mortgage life insurance pays the

proceeds to a named beneficiary who is free to use the money for any purpose.

Closing costs are sometimes called settlement costs. They are in addition to the price of the house. They may include costs such as mortgage service charges, transfer taxes, recording fees, title search and title insurance costs, and prepaid real estate taxes and insurance. Find out about them well in advance of the settlement.

Whether the buyer or seller pays these charges (other than the prepaid taxes and insurance which the buyer pays) varies from place to place and is subject to terms of the contract.

Title search is a check of the title records to make certain there are no overdue taxes, assessments, liens or other claims, or any outstanding restrictive covenants on file against the property you are buying. The search also will show the current ownership of the property—in other words, whether the seller has anything to sell.

Title insurance protects the lender and yourself, if you wish to purchase separate coverage, against defects in the title due to occurrences which are traceable to flaws in the legal title of previous owners, negligence of the examining attorney, and other causes as described in the title insurance policy.

Now that you own and have moved into your home, your legal problems as a homeowner have just begun. Some of the many problems you will face involve insurance, taxes and assessments, maintenance and repairs, and the possible refinancing of your home.

In addition to title insurance and mortgage insurance, the wise homeowner will carry a homeowners insurance policy. The lender may require you to carry a policy of this type. Such a policy will protect you from loss due to weather damage (with certain limitations involving floods and earthquakes), fire, other accidental occurrences, and theft. It will also protect you against liability to a person who is injured in your home or on your property.

These policies are available with various types and amounts of coverage.

The type and amount you choose will depend on your own needs.

As a homeowner you will be responsible for paying all real estate taxes and assessments levied against your property.

A real estate tax is a tax levied by the local or State government. It is based on a percentage of the assessed value of your property. The rate of tax normally is uniform for all single family residences throughout the taxing area.

If you believe that the assessed value of your house is too high, most jurisdictions provide a Board of Tax Appeals where you can appeal the assessment. If the board rules against you, you must pay the tax unless you decide to bring the case before a court.

A special assessment is a tax for a specific purpose, such as providing paved streets or new sewers. If your home is directly benefited by the improvement, you may have to pay your proportionate share of its cost.

Sometimes your home will be subject to a special assessment when you purchase it. If so, you should agree with the seller in the sale agreement as to who will pay the assessment.

After you have lived in your home for a while, certain items will have to be repaired or be replaced. Always, whether for maintenance or minor or major repairs, deal with a person with a good reputation in the area.

Do not sign repair contracts without carefully reading and understanding them. You should have your attorney review any documents you cannot understand, and many of the ones you think you do.

Before expanding or modifying your house you should check to see whether a building permit is required or whether a zoning ordinance restricts the type of project being undertaken.

Some repair contracts provide for taking a lien on your home. This type of provision could mean, at worst, loss of your home and, at best, considerable anxiety if you miss a payment on your repair bill.

Sometime during your homeownership you may find you need to borrow a relatively large sum of money, for which the lender will require some form of security. You may wish to make major repairs to your home, add a room, perhaps send a child to college.

This can be accomplished by pledging your equity in your home as security. The lender will take a second mortgage or second trust on your home. The conditions of such security are usually the same as those of a first mortgage or deed of trust, except that the interest rate will probably be higher, depending on market conditions, since the second security has a lesser priority than the first.

The best advice for dealing with any of the problems discussed in this chapter and any other legal concerns of the purchaser and owner of a home is to seek the advice of a reputable attorney on whom you can rely.

Developing a Plan For a House to Fit Family Needs

THE KEY in planning your house is to choose and develop ideas that will meet present and future needs of yourself and your family. From the plan, you will be able to visualize the important relationship of the various areas of the house and to convey to others your ultimate ideas of housing needs. In its completed form, the plan will serve as the basis for financial arrangements, the securing of building permits, and finally the building of your house—whether contracted or self-help.

Space requirements will be determined by your family's size, day to day living, and possessions. Living units should be planned to have enough space for furniture or equipment. To try this out, test your preliminary floor plan with furniture drawn to scale.